

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. AMIT SHUKLA, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA No.4522 &4534/Del/2018  
Assessment Year: 2013-14 & 2014-15

<b>DCIT Circle – 7 (1) New Delhi</b>	<b>Vs</b>	<b>Decent Financial Services Pvt. Ltd. A-86, DDA Shed, Phase-II, Okhla Industrial Area, New Delhi PAN No. AAACD2899P  (RESPONDENT)</b>
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Appellant by	Sh. Mahesh Thakur, Sr. DR
Respondent by	Sh. Amit Sharma, Advocate

Date of hearing:	08/07/2021
Date of Pronouncement:	08/07/2021

**ORDER**

**PER N. K. BILLAIYA, AM:**

ITA No. 4522/Del/2018 and 4534/Del/2018 are two separate orders of the CIT(A)-3, Delhi dated 27.03.2018 pertaining to A.Y. 2013-14 and 2014-15.

2. Both the appeals were heard together and are disposed of by this common order for the sake of convenience.

**ITA No.4522/De/2018 (A.Y. 2013-14)**

1. A solitary grievance of the revenue read as under :-

*“1. Ld. Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the disallowance of Rs.1,94,88,882/- made by the AO u/s. 14A of Income Tax Act, 1961 read with Ruel 8D of the Income Tax Act, 1962.”*

2. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee has earned dividend income of Rs.13522929/-. The AO further noticed that out of the total dividend income Rs.6293308/-was earned from share held as stock in trade and dividend of Rs.7229621/- was earned on shares held as investment.

3. The AO issued a show cause notice to the assessee asking it to explain why disallowance u/s.14A should not be made. In its reply the assessee strongly contended that provisions of section 14A is not attracted on the facts of its case and further pointed out that it had suo moto disallowed Rs.112253/-. It was further explained that dividend income of Rs.1.35 crores was not claimed

as exempt from tax and has been offered to tax as taxable income.

4. The submission were dismissed by the AO who proceeded to compute the disallowance u/s.14A invoking rule 8D and computed the disallowance at Rs.19488882/-.

5. Assessee strongly agitated the matter before the CIT(A) and reiterated what has been stated during the assessment proceedings.

6. After considering the facts and the submissions and drawing support from several judicial decisions the CIT(A) held as under :-

*“2.1 I have carefully considered the assessment order and the submissions of .the appellant on this issue. The appellant has earned Rs. 1.35 crore tax exempt income during this year. The Assessing Officer has computed disallowance u/ s 14A of Rs. 1,94,88,882/-. The appellant has relied on the decision of Delhi High Court in the case of Joint Investment (P) Ltd. v. CIT(2015) 59 taxmann.com 295(Delhi). In the present case the AO has not recorded his satisfaction for making disallowance u/s 14A r.w. Rule 8D by rejecting the assessee’s claim or explanation as laid down in the case of Taikisha Engineering India Ltd. The Ld. AR of appellant submitted a copy of the order of Hon’ble ITAT ‘B’ Bench, New Delhi in ITA No. 4569/Del/2013 for AY 2009-10 dated 14.11.2014 in the case of appellant in which Hon’ble ITAT has upheld the recalculation of disallowance under Rule 8D by CIT(Appeals). CIT(Appeals) has recalculated the disallowance under Rule 8D by*

*excluding “the figure of interest expenditure amounting to Rs. 847.95 lacs which was capitalized by the assessee and was not claimed as a deduction in the P&L account. This recalculation of disallowance by excluding the interest expenditure already capitalized by the assessee is correct and therefore we see no reason to interfere with the order of the CIT(Appeals). It is ordered accordingly.” Following the ratio laid down in the case of Joint Investment (P) Ltd. {Supra}, by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in section 14A, and is only to the extent of disallowing expenditure “incurred by assessee in relation to the tax exempt income”. Assessing Officer is directed to recalculate the disallowance u/s 14A by excluding the interest expenditure already capitalized by appellant and therefore to limit the disallowance u/s 14A to the amount of exempt income earned, i.e. Rs. 1.35 crore. Hence, this ground of appeal is partly allowed.”*

7. Before us the DR strongly supported the findings of the AO and the counsel relied upon the decision of the CIT(A). We have given a thoughtful consideration to the orders of the authorities below. It is true that the AO has not recorded his satisfaction for making the disallowance u/s.14A r.w.r. 8D. We further find that this Tribunal in assessee’s own case for A.Y. 2009-10 in ITA No.4569/Del/2013 order dated 14.11.2014 has upheld the recalculation of disallowance under Rule 8D as directed by the CIT(A).

8. We find that in the light of the decision of the coordinate bench the CIT(A) has simply directed the AO to re-compute the

disallowance. We, therefore, do not find error and infirmity in the findings of the CIT(A).

**ITA No.4534/Del/2018 (A.Y.2014-15)**

1. The only grievance of the revenue read as under :-

*“1. Ld Commissioner of Income-tax (Appeals) erred in law and on the facts of the case in deleting the disallowance of Rs. 3,55,18,506/- made by the AO u/s 14A of Income Tax Act, 1961 read with Rule 8D of the Income Tax Act, 1962. While making above deletion CIT(A) has not considered the fact that clause (f) of Explanation 1 of section 115JB(2) of the Act, introduced by the Finance Act, 2006 is squarely applicable to the assessee for the year under consideration.”*

2. Briefly stated the facts of the case are that during the course of the scrutiny of assessment proceedings the AO noticed that the assessee has earned dividend income which is claimed to be exempt from tax.

3. Assessee was asked to file copy of computation of disallowance u/s.14A r.w.r. 8D. Assessee filed a detailed reply strongly contending that no deduction should be made in respect of any expenditure incurred by the assessee in relation earning of exempt income and the assessee has not incurred any expenses

for earning the exempt income. It was also claimed that the dividend income of Rs.1.39 crores is not claimed as exemption and same has been offered for tax as taxable income.

4. The explanation of the assessee did not find any favour with the AO who computed the disallowance u/s. 14A r.w.r. 8D at Rs. 35518506/-.

5. Assessee strongly agitated the matter before the CIT(A) and reiterated its claim that no disallowance need to be made u/s. 14A of the Act.

6. After considering the facts and the submissions the CIT(A) was convinced and held as under :-

*“3.1 I have carefully considered the assessment order and the submissions of the appellant on this issue. The appellant has earned Rs. 1.39 crore tax exempt income during this year. The Assessing Officer has computed disallowance u/s 14A of Rs. 3,55,18,506/-. The appellant has relied on the decision of Delhi High Court in the case of Joint Investment (P) Ltd. v. CIT(2015) 59 taxmann.com 295(Delhi). In the present case the AO has not recorded his satisfaction for making disallowance u/s 14A r.w. Rule 8D by rejecting the assessee’s claim or explanation as laid down in the case of Taikisha Engineering India Ltd. The Ld. AR of appellant submitted a copy of the order of Hon’ble ITAT ‘B’ Bench, New Delhi in ITA No. 4569/Del/2013 for AY 2009-10 dated 14.11.2014 in the case of appellant in which Hon’ble ITAT has upheld the recalculation*

*of disallowance under Rule 8D by CIT(Appeals). CIT(Appeals) has recalculated the disallowance under Rule 8D by excluding “the figure of interest expenditure amounting to Rs. 847.95 lacs which was capitalized by the assessee and was not claimed as a deduction in the P&L account. This recalculation of disallowance by excluding the interest expenditure already capitalized by the assessee is correct and therefore we see no reason to interfere with the order of the CIT(Appeals). It is ordered accordingly.” ‘ Following the ratio laid down in the case of Joint Investment (P) Ltd. {Supra}, by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in section 14A, and is only to the extent of disallowing expenditure “incurred by assessee in relation to the tax exempt income”. Assessing Officer is directed to recalculate the disallowance u/s 14A by excluding the interest expenditure already capitalized by appellant and therefore to limit the disallowance u/s 14A to the amount of exempt income earned, i.e. Rs. 1.39 crore. The AO has added the disallowance computed u/s 14A r.w. Rule 8D at Rs.3,55,18,506/- to the Book Profit u/s 115JB of the Act. The AO has not recorded any cogent reason regarding the impugned addition u/s 115JB. It is to be noted that the computation under section 115JB of the I.T. Act is in accordance with the provision of the Companies Act. Hence, disallowance done by assessing officer u/s 14A r.w. Rule 8D will not result in addition to the computation of income u/s 115JB.Hence, these grounds of appeal are partly allowed.”*

7. Before us the DR strongly supported the findings of the AO and the counsel relied upon the findings of the CIT(A).

8. We have carefully considered the orders of the authorities below. It is apparent from the assessment order that the AO has added the disallowance computed u/s.14A r.w.r 8D to the book profit u/s.115 JB of the Act. This issue is now well settled in favour of the assessee and against the revenue by the decision of the Special Bench of the Tribunal in the case of Vireet Investment Private Limited 165 ITB 27. Since no distinguishing decision has been brought to our notice we do not find any error and infirmity in the findings of the CIT(A).

9. In the result, both the appeals filed by the revenue are dismissed.

10. Decision announced in the open court in the presence of both the representatives on 08.07.2021.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:-08.07.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	08.07.2021
Date on which the typed draft is placed before the dictating Member	08.07.2021
Date on which the typed draft is placed before the Other member	08.07.2021
Date on which the approved draft comes to the Sr.PS/PS	08.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	08.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	08.07.2021
Date on which the final order is uploaded on the website of ITAT	08.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	